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No. 88-994

In The

Supreme Court of the United States

October Term, 1988

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY,

Petitioner,

v.

L. LEE BEARDSLY, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by declaring that the individual respondents had the right to have their claims submitted to arbitration, subject to the defense of laches.

2. Whether the Court of Appeals properly determined that an arbitrator, rather than a court, should decide whether an arbitration proceeding is subject to the defense of laches.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, former employees of the Chicago, Rock Island & Pacific Railroad Company ("Rock Island"), respectfully requests that this Court deny the petition for writ of certiorari filed by petitioner, Chicago & North Western Transportation Company ("CNW"), seeking review of the Court of Appeals for the Eighth Circuit's opinion in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 850 F.2d 1255 (Pet. App. 1a-44a). That opinion was issued upon a request for rehearing and

superseded the court's earlier opinion which was reported at 836 F.2d 1493. The opinions, rulings, orders, and judgment of the United States District Court for the Southern District of Iowa which form the basis for the Court of Appeal's opinion are all unreported (Pet. App. 45a-73a).

JURISDICTION

The decision of the Court of Appeals upon rehearing was issued on June 15, 1988. Petitioner's petition for rehearing and suggestion for hearing en banc was denied on September 14, 1988 (Pet. App. 92a). Petitioner filed its petition for a writ of certiorari on December 13, 1988. The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 3 First of the Railway Labor Act, 45 U.S.C. § 153 First; § 105 of the Rock Island Transition and Employee Assistance Act, 45 U.S.C. §§ 1004; § 704(g) of the Regional Rail Reorganization Act, 45 U.S.C. § 797c(g); and § 10 of the National Labor Relations Act, 29 U.S.C. § 160(b), are set forth in pertinent part at Pet. App. 80a-84a.

STATEMENT OF THE CASE

1. In late 1983 and early 1984, the individual respondents[1] filed a number of lawsuits against CNW, the United Transportation Union ("UTU"), the Brotherhood of Locomotive Engineers ("BLE"), and two other unions. The complaint in those cases alleged that the defendants violated a contract entered into between numerous parties on March 4, 1980 ("March 4th Agreement"), provisions of the Rock Island Railroad Transition and Employees' Assistance Act ("RITEA"), 45 U.S.C. § 1001 *et seq.*, and the duty of fair representation under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* The complaints requested substantive relief in the form of damages against all defendants, including petitioner. The complaint also requested that the respondents be given seniority with CNW which dovetailed with the seniority of other CNW employees.

In response to the complaint, the defendants raised several arguments. They argued that the individual respondents failed to exhaust the "administrative remedies" provided by the RITEA and the March 4th Agreement. They also argued that, based on the reasoning of this Court in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), a six month statute of limitations prevented the district court from hearing the case.

The defendants filed summary judgment motions arguing, in part, that the claims in the complaint

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[1] The respondents who were former Rock Island employees shall be referred to as the "individual respondents". The other respondents shall be referred to by name or as the "unions".

fell outside the six month limitations that should be applied to the case, and hence the district court did not have jurisdiction to hear the case. They also argued that the RITEA did not give the district court jurisdiction over the case and that the individual respondents' claims were barred because they had not sought arbitration.

The respondents argued that a two year statute of limitations based upon a similar two year limitation period contained in Section 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r), should be used rather than a six month period. The respondents also argued that the statute of limitations did not start running until some time after June 20, 1983 – the date the bankruptcy court issued final approval of the sale of the Rock Island assets to CNW. They argued that the earlier implementing agreements were merely interim and not final until the transfer was approved, since there was uncertainty regarding which railroad would finally control the railroad lines formerly operated by Rock Island. They further argued that the facts contained in the affidavits of the individual respondents indicated that, in any event, a question of fact existed as to whether the statute of limitations should be tolled because of certain inequitable conduct by the defendants. The individual respondents also argued that the court had jurisdiction under the RITEA to hear their cases, even though they had not sought arbitration.

The district court granted the defendants' summary judgment motions. The individual respondents then appealed to the Eighth Circuit, where their cases were consolidated.

2. On appeal to the Eighth Circuit, the defendants argued that the district court's decision should be affirmed because the applicable six month statute of limitation deprived that court of jurisdiction (Pet. App. 25a). In particular, they argued that the same reasoning which supported a six month statute of limitations in *DelCostello*, should be followed, so that no action which accrued prior to May 18, 1983, could be brought in federal court. They further argued that the statute of limitations should have started running with a signing of the implementing agreements between the CNW and the various unions setting hiring conditions and allocating seniority between former Rock Island employees and incumbent CNW employees.

The respondents again argued that the appropriate statute of limitations to apply to cases under the Railroad Labor Act is the two year period specified in 45 U.S.C. § 153 First (r). The respondents argued that the two year period specified in that section more accurately reflected a congressional determination regarding the appropriate time limit for resolving employment disputes in the railroad context. The respondents again argued the statute of limitations did not begin to run until some time after June 20, 1983, when the CNW purchase was finalized.

The parties disagreed about whether the respondents had any right to arbitration under RITEA (Pet. App. 38a). CNW and the unions argued that the statutory arbitration provision in 45 U.S.C. § 797c(g) no longer applied because of the sunset provision in 45 U.S.C. § 797c(f) (Pet. App. 38a). The individual respondents, on the other hand, argued that the lack of an arbitration provision strengthened their argument that they could bring an independent federal action.

The Eighth Circuit held that the respondents could not bring, at this time, an independent cause of action for money damages under the March 4th Agreement or under the RITEA (Pet. App. 21a-25a). The court also held that the respondents' unfair representation claims against the unions were barred by the running of a six month statute of limitations (Pet. App. 25a). The Court, however, went on to resolve other controversies which existed between the parties by declaring the rights which each party had under the March 4th Agreement and the RITEA.

In particular, the court's opinion resolved a controversy between the individual respondents and the other parties regarding the availability of arbitration and the need for the individual respondents to have used arbitration prior to the filing of the lawsuit. The court determined that the sunset provision of 45 U.S.C. § 797c(f) was not meant to remove the claims of the individual respondents under the RITEA from the arbitration procedures established by § 797c(g). As to arbitration of the March 4th Agreement, the court held that the respondents had the right to have a neutral arbitrator determine whether their rights were adequately protected under the terms of the various implementing agreements between CNW and the unions (Pet. App. 41a-43a).

The court noted, however, that an arbitrator would have to determine whether the respondents' claims under the March 4th Agreement and RITEA were barred by the equitable doctrine of laches. The court described some, but not all, of the factors that an arbitrator should take into account in making a laches determination (Pet. App. 42a-43a).

REASONS WHY THE PETITION SHOULD BE DENIED

The petition should be denied because the action taken by the Eighth Circuit does not conflict with the decisions of this Court or any other court. Moreover, the petition does not present an unsettled issue of law regarding the proper forum for deciding the laches issue, because that issue was properly decided by the lower court. Finally, given the unique circumstances surrounding this case, the petition does not present an important issue of federal law.

I. The decision below comports with this Court's decision in *DelCostello v. Brotherhood of Teamsters* and does not conflict with the decisions of the other courts of appeals, and so does not need to be reviewed.

1. The petition argues that the Eighth Circuit's opinion improperly ignores the analysis of this Court in *DelCostello*. *DelCostello* dealt with which statute of limitation should be "borrowed" in certain "hybrid" cases under the Labor Management Relations Act involving federal lawsuits against both an employer (for breach of a collective bargaining agreement) and a union (for breach of the duty of fair representation). *DelCostello*, 462 U.S. at 154. The Court determined that the limitation period contained in § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), should be "borrowed" as the statute of limitations for both claims in such "hybrid" cases. *Id.* at 155.

The *DelCostello* Court based its determination on a number of factors, including the fact that the six month

period represented a congressional determination that such a period represented a balancing "between the national interest in stable bargaining relationships and finality of private settlements," the need for a longer period for filing a federal lawsuit than is given in most state limitation periods, and the need for national uniformity. *Id.* at 166, 171.[2]

In this case, the Eighth Circuit determined that, while it could not decide the claims for money damages filed by the individual respondents, it could declare what other relief was available to them because there was a controversy regarding the necessity of and availability of arbitration. *Cf. Butler v. Local Union 823*, 514 F.2d 442, 454 (8th Cir. 1975) (a final judgment should grant the relief to which a party is entitled, even if that relief was not requested in the pleadings).[3] In so doing, the court did not determine that laches governed the bringing of this *lawsuit* as argued by petitioner (Pet. 10-12), but instead determined that laches could limit the availability of *arbitration*.

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[2] The Court, however, was not asked to determine that federal law required that there be a six month statute of limitations which was to be implied as the time limit for requesting arbitration when the parties themselves (or through the requirements of an Act of Congress) established the procedures for arbitration, but failed to establish the time period for initially requesting arbitration.

[3] As noted above, part of the thrust of the various complaints was a request for money damage. However, the complaints also raised issues regarding the interpretation of the March 4th Agreement and the RITEA which petitioner and the individual respondents debated during the course of this litigation. Such issues are to be decided by federal courts. *See*

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Indeed, part of the controversy which existed among the parties centered around the need for the individual respondents to have obtained arbitration in a proper forum before filing the present lawsuit. In addition, the parties argued about the affect of the sunsetting provision on the arbitration provisions that were added to the RITEA.[4] Since an arbitrators decision on the merits had not yet been obtained by many of the individual respondents,[5] this issue was properly presented to the courts below for resolution. Moreover, since a true controversy existed between the parties which needed to be resolved, the court below did not determine the arbitration issue *"sua sponte"* as argued by petitioner (Pet. 7).

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Chicago & North Western Transportation Co. v. United Transportation Union, 111 L.R.R.M. 2642, 2643 (D.D.C. 1982) (interpretation of March 4th Agreement is within the "province of the federal courts"). *See generally Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320, 323 (1972) (contract governed by federal labor statute are "governed and enforceable by federal law, in the federal courts").

[4] To help it decide the dispute regarding the applicability of 45 U.S.C. § 797c(g) in light of the sunset provision in § 797c(f), the Eighth Circuit requested the parties to submit a post-argument memorandum dealing with that issue.

[5] The seniority of a group of the individual respondents was explicitly affected by the terms of the arbitration award set aside by the Eighth Circuit's opinion. The petition does not appear to challenge the court's decision in setting aside that arbitration award. The issue of whether the arbitration award was correctly set aside is now the subject of a cross-petition filed by the UTU. *See United Transportation Union v. L. Lee Beardsly*, No. 88-___.

The Eighth Circuit's opinion was essentially an opinion declaring the right of each individual respondent to have his or her claim heard by a neutral arbitrator. The court used its authority to interpret the RITEA and the March 4th Agreement to clarify and declare the rights of the parties. Because the lower court issued what amounted to a declaratory judgment, the bulk of petitioner's argument regarding *DelCostello* is misdirected.

DelCostello dealt with the time limitations which apply to the bringing of certain lawsuits based on federal labor statutes. It did not deal with the timing of a request for arbitration nor did it place limits on a court's power to declare the rights of parties to seek a remedy when that remedy is still open to them. Neither of those issues can be classified as an issue connected with determining what statute of limitations applies to the bringing of a federal lawsuit. Therefore, the reasoning of *DelCostello* does not conflict with the action taken by the Eighth Circuit.

2. Because the individual respondents had not sought and obtained arbitration in a proper forum before filing suit, these cases differ from the cases of the other courts of appeals cited in the petition which dealt with when an action accrued for statute of limitations purposes (Pet. 10). In those cases, a request for arbitration had either been made and refused or had not been made before the contractual period for requesting arbitration had run.[6] Thus, those cases do not conflict with

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[6] *See, e.g., Associated Brick Mason Contractors v. Harrington*, 820 F.2d 31, 38 (2d Cir. 1987) (action accrued when union rejected arbitration demand); *McCreedy v. Local Union No. 971*,

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the decision of the Eighth Circuit in this case, since no such refusal or time limit are involved.

The Eighth Circuit's opinion makes clear that the decision relating to the rights of the individual respondents to have their claims arbitrated was based on the fact that arbitration was still available under the terms of the RITEA and the March 4th Agreement. The court's opinion establishes a consistent scheme requiring that the respondents first seek arbitration of any dispute in a forum with proper jurisdiction before seeking review of the merits in federal court. Thus, the court examined the merits of the one claim which had gone to and been decided by arbitration, while referring all other claims to arbitration.

3. To the extent that the opinion below indicated that arbitration was available even though more than six months had passed from the signing of the agreements at issue, the decision is neither surprising nor incorrect. The court held that because the provisions of the March 4th Agreement and the RITEA did not contain a time limit for bringing arbitration, that the respondents were not automatically barred from seeking arbitration (Pet. App. 40a-43a). Thus, the court determined that even though

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UAW, 809 F.2d 1232, 1237 (6th Cir. 1987) (action accrued after union took no appeal to arbitration within the 7-day period specified in contract); *International Association of Machinists v. Allied Products Corp.*, 786 F.2d 1561, 1562, 1565 (11th Cir. 1986) (action accrued when employer refused to arbitrate); *Teamsters Union Local 315 v. Great Western Chemical Co.*, 781 F.2d 764, 769 (9th Cir. 1986) (action accrues when employer communicated its refusal to arbitrate to union); and *Federation of Westinghouse Salaried Unions v. Westinghouse Electric Corp.*, 736 F.2d 896, 902 (3d Cir. 1984) (action accrues when employer finally refuses to arbitrate).

the individual respondents could not bring unfair representation claims in federal court, they could still seek arbitration, subject to a defense of laches.

Petitioner incorrectly argues that the Eighth Circuit's approach does not square with this Court's reasoning in *DelCostello*. However, *DelCostello*, and cases decided subsequent to that opinion, have dealt with whether a federal six month statute of limitations impliedly applies to breaches of the duties established by certain federal labor statutes. No case has ever held or implied that a six month limitation period exists for demanding arbitration under a contractual arbitration procedure or under a statutory provision creating an arbitration procedure. Indeed, if such a period were implied into a contract, the Court, rather than the parties, would be establishing contractual time limits for arbitration procedures.

Generally, a collective bargaining agreement governs the use of arbitration, and such an agreement sets the length of time which a party or an employee has to initiate a request for arbitration. The six month *DelCostello* period applied to labor cases has no relation to the time period specified for arbitration. Many contractual arbitration time limits are short, and may be as short as 48 hours. Other time limits for arbitration are much longer. *Cf. Sisco v. Consolidated Rail Corp.*, 732 F.2d 1188, 1190 (3d Cir. 1984) (contractual provisions in labor agreement may *prevent* bringing of dispute for one year); *Conticommodity Services Inc. v. Phillip & Lion*, 613 F.2d 1222, 1226 (2d Cir. 1980) (describing a one-year period for seeking arbitration in the non-labor context). Therefore, the six month statute of limitations is not related to the

ability of an employee to file an arbitration claim under a collective bargaining agreement.

This concept can best be illustrated by a hypothetical example from an arbitration context slightly different from the one at issue. Assume that parties have agreed that because of past discrimination, any discrimination claim brought by an employee can go to arbitration up to one year following the alleged discriminatory act. Federal law and most state laws only allow a person six months for the filing of a discrimination claim with the appropriate agency. *See, e.g.*, 42 U.S.C. § 2000e-5(f). Failure to file within that time period bars a subsequent lawsuit. *See, e.g., Delaware State College v. Ricks*, 449 U.S. 250 (1980).

Under that scenario, if an employee attempts to file a discrimination complaint with the appropriate agency seven months after the alleged act, the agency should dismiss his claim immediately. If the employee then files a lawsuit, the court will state that the employee's action is barred by the applicable limitation period. However, if the matter reached the court quickly enough, the court could correctly indicate that while having no jurisdiction to hear the substantive discrimination case, it could still declare that arbitration under the contract was still available to the plaintiff because the arbitration period specified in the agreement had not yet expired.

The above example demonstrates that a person can be denied access to a court regarding a claim, while still having the ability to raise that claim in an arbitral forum. *Cf. Santos v. District Council of New York*, 619 F.2d 963, 969 (2d Cir. 1980) (accrual of cause of action for statute of

limitation purposes may not preclude the availability of other relief in a non-judicial forum).

In this case, the court below made a similar decision to the hypothetical decision described above. The court held that it did not have the ability to hear the claims for money damages. The court, however, also stated that because neither the March 4th Agreement nor the RITEA specified a time limit for bringing an arbitration claim, the individual respondents could bring a claim for arbitration subject to the defense of laches. Therefore, the lower court's decision is correct.

II. The Eighth Circuit properly declared that an arbitrator rather than the court should decide the laches issue in each case.

The petition presents a question involving whether a court or an arbitrator should decide in the first instance that an arbitration proceeding should be barred because of laches (Pet. i). The precedents of this Court indicate that such a decision is for the arbitrator to decide. Thus, the Eighth Circuit's decision was correct and need not be reviewed by this Court.

1. In the petition, petitioner argues that if the laches issue needs to be decided, this Court should clarify who should decide that issue (Pet. 14-15). This Court, however, has examined the questions of whether laches is to be decided by an arbitrator or a court, and has determined that the arbitrator is the proper person to decide the issue. For example, in *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557-58 (1964), this Court held that if an arbitrator was to hear the "substance" of a

disagreement, then he or she should also hear and decide the "procedural" issues arising out of the dispute. Indeed, the court stated:

> It would be a curious rule which required that intertwined issues of "substance" and "procedure" growing out of a single dispute and raising the same questions on the same facts had to be carved up between two different forums, one deciding after the other. Neither logic nor considerations of policy compels such a result.

Id. at 557.

As is discussed more fully below, the substance of the underlying dispute in this instance and the procedural question of laches are intertwined and will require resolution of closely related factual issues. *John Wiley* indicates that such disputes are properly sent to an arbitrator for resolution.

In *International Union of Operating Engineers v. Flair Builders, Inc.*, 406 U.S. 487, 491 (1972), this Court also found that when an agreement empowered an arbitrator to decide "any difference" which existed under an agreement, the arbitrator rather than the court would decide a dispute relating to the issue of laches. The *Flair Builders* decision emphasized that procedural issues such as laches should be decided in the first instance by an arbitrator. *See also Conticommodity*, 613 F.2d at 1226 (arbitrator in non-labor context to decide whether arbitration is time-barred); *AT&T Technologies v. Communications Workers of America*, 475 U.S. 643, 649-50 (1986) (even "frivolous" claims for arbitration may be sent to an arbitrator for resolution).

Petitioners, however, question whether the Court of Appeals had the authority to describe some of the factors which an arbitrator should examine when looking at the laches issue in this case (Pet. App. 42a). The court stated that the arbitrator should look at two issues. "First, the arbitrator should consider the delay in seeking redress caused by the closing of the Rock Island locals by various internationals" (Pet. App. 42a). "Second, the arbitrator should take into account the cumulative effect of the serious unfair representation by the internationals in terms of the March 4th appellants" (Pet. App. 42a). Petitioner argues that these two directives were issued in violation of the arbitrators right to determine the laches issue.

However, the court below did not say that those were the only two issues that an arbitrator must examine. Moreover, in light of the court's holding regarding the improper actions by the UTU and others, the court could correctly declare that an arbitrator had to review that holding in reaching a laches decision. General principles of collateral estoppel require that when an issue has been decided as between two or more parties, that issue should not be re-litigated. Here, the court, after full argument and briefing, reached certain conclusions regarding the actions of the various parties. Those conclusions should be binding on an arbitrator, so the court correctly declared that an arbitrator must take them into account.

2. The substantive and procedural issues which will be connected with any arbitration are factually intertwined. Part of the individual respondents' claims are based on actions by the unions in both the negotiations and in their dealings with the individual respondents.

Those same actions are also connected with the issues raised regarding whether there was inequitable conduct by the parties which would cause the equitable tolling of a statute of limitations if the case were in court or would prevent a finding that laches applied if the case is heard in an equitable forum.

This Court has stated that "[w]hether laches bars an action in a given case *depends upon the circumstances of that case* and 'is a question primarily addressed to the discretion of the trial court'". *Burnett v. New York Central Railroad Co.*, 380 U.S. 424, 435 (1965) (emphasis added; citation omitted). Thus, to determine whether laches applies, a number of factual issues must be decided and weighed by a fact-finder. Such factual issues may vary from individual to individual in this case. The Eighth Circuit properly sent the laches issue to an arbitrator to decide, since such a fact intensive decision should be left to the fact-finder who will resolve the substantive issues. *Cf. John Wiley*, 376 U.S. at 557.

3. Petitioner also raises issues regarding whether it is equitable for disputes which have been around for a number of years to be sent back to arbitration (Pet. 12). It argues that the various parties have "structured their operations and lives" according to the belief their earlier arrangements are final. That argument, however, shows why the arbitrator, rather than a court, should hear the laches issue, since the determination of the laches issue necessarily requires a weighing of the equities that affect all parties which exist in each case. *Cf. Burnett*, 380 U.S. at 435.

As this Court has stated:

> Equity eschews mechanical rules; it depends on flexibility. Equity has acted on the principle that "laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claims to be enforced – an inequity founded upon some change in the condition or relations of the property or the parties." . . . And so, a suit in equity may lie though a comparable cause of action at law would be barred.

Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946) (citations omitted). Thus, in determining whether the claims of the individual respondents are barred by laches, an arbitrator must necessarily weigh some of the equitable issues raised by petitioner.

Indeed, when similar questions regarding whether an arbitrator could properly determine how former employees of one company would fit into a new company, this Court stated:

> Problems might be created by an arbitral award which required Wiley to give special treatment to the former Interscience employees because of rights found to have accrued to them under the Interscience contract. But the mere possibility of such problems cannot cut off the Union's right to press the employees' claims in arbitration. While it would be premature at this stage to speculate on how to avoid such hypothetical problems, we have little doubt that within the flexible procedures of arbitration a solution can be reached which would avoid disrupting labor relations in the Wiley plant.

John Wiley, 376 U.S. at 552 n.5. Thus, this Court has indicated that arbitrators can and should handle the difficult questions raised by a situation such as this one. The lower court, therefore, was correct in sending the laches

issue, and all the equitable questions which the decision of that issue entails, to an arbitrator to decide. Thus, this Court need not review that decision.

III. The unique nature of this case means that the petition raises no issues of national importance which this court should resolve.

1. This case arose out of the discontinuation of service of the Rock Island railroad. The respondents know of no other cases pending or decided in any other court of appeals dealing with the availability of arbitration for former Rock Island employees as presented in this case. Petitioner, however, argues that the decision below conflicts with other decisions on several points. But, as noted above, those arguments are based on a misreading of the lower court's opinion and existing case law. The lower court did not, as petitioner argues, order *sua sponte* that certain relief be granted after finding that it did not have jurisdiction over the entire case. Instead, the Eighth Circuit determined that there was no subject matter jurisdiction over certain portions of the case, and no meritorious issues on another part of the case due to the statute of limitations, while impliedly holding that there was jurisdiction over another existing and remaining portion of the case involving a controversy between the parties. When the case below is interpreted in that fashion, no conflict exists between that decision and any other decisions.

2. The circumstances giving rise to this case are unique. The case involved the closure of a railroad, the reaching of a broadly worded agreement (i.e., March 4th

Agreement) regarding, among other things, the absorbtion of Rock Island employees into any of a number of potential new carriers, the passage of a federal statute (i.e., RITEA) specifically designed to meet the problems of the Rock Island situation, and the failure by at least one union to properly act during the negotiations regarding seniority. The combination of events which preceded the filing of the lawsuits at issue indicate that the resolution of particular matters as raised by this writ will not have any important federal consequences.

Indeed, because of the filing of this lawsuit and the opinion issued by the Eighth Circuit, it is doubtful that any other rail carriers, unions, or employees would conduct themselves in the same manner as those parties acted in this case. Moreover, in light of the case below, Congress itself may draft legislation dealing with the closure of a rail carrier more specifically and clearly so that the needs and expectations of all future parties are clarified further than they were in this instance.

Because the situation giving rise to these cases is unique, and because it is doubtful that they will be repeated, the petition raises no important issue of federal law which the Court should decide.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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